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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,480	05/09/2001	William T. Florence	18360/234317	3771
826	7590	03/15/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			JEANTY, ROMAIN	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/851,480	<b>Applicant(s)</b> FLORENCE, WILLIAM T.	
	<b>Examiner</b> Romain Jeanty	<b>Art Unit</b> 3623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/16/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,5-8,10,12-15,17-19,22,23,25-28 and 31-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4, 9-11, 16, 20-21, 24, 29-30 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. This Office Action is in response to the communication received on December 16, 2005. In the communication, amended claims 1, 9, 16, 24, and 40 were amended. Claims 1-2, 4, 9-11, 16, 20-21, 24, 29-30 and 40 are still pending in the application.

### **Response to Arguments**

2. Applicant's arguments filed December 16, 2005 have been fully considered but they are not persuasive.

### **Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 9, 11, 16, 24, 29 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukuda (US Patent No. 6,085,170) in view of David (Core Competency).

As per claims 1, 9, 16, most delivery systems provide time windows for recipient to receive particular items (i.e., the time window may be the days of the week or weekends). Overlapping time windows are time periods within a given day. System for providing a delivery time is well known in the art. For example, Tsukuda discloses a delivery system for managing delivery of goods from a distribution center. In so doing, Tsukuda discloses a delivery managing system in which an individual may choose a delivery time with the obvious difference that receiving choices from a plurality of overlapping time windows are not made by a recipient.

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David teaches a system in which a customer (the examiner interprets the customer as “recipient”) selects. It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda to include an overlapping time window being selected by a recipient/customer as evidenced by David in order to allow a recipient to receive a particular package at a time that would be available to receive it.

As per claims 2, 10, Tsukuda does not expressly disclose providing each recipient with a plurality of time windows that include at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows. However, Tsukuda discloses the date and time for scheduling a delivery (col. 5, lines 26-46). In addition, David teaches a system in which a customer. It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda to include an overlapping time window being selected by a recipient as evidenced by David in order to allow a recipient to receive a particular package at a time that would be available to receive it.

As per claims 4, 11, Tsukuda does not expressly disclose providing each recipient with a plurality of time windows that include at least two sequential one-hour time windows and at least one overlapping time window that overlaps each of the sequential time windows by one-half hour. However, Tsukuda discloses the date and time for scheduling a delivery (col. 5, lines 26-46). In addition, David teaches a system in which an overlapping time is used (i.e. the time can be half-hour, 1 hour, 1.5 hour, 2 hours, 2.5 hours, etc). Note entire page 2 of David. It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda to include an overlapping time window being selected by a recipient as evidenced by David in

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order to allow a recipient to receive a particular package at a time that would be available to receive it.

As per claims 24 and 40, most delivery systems provide time windows for recipient to receive particular items (i.e., the time window may be the days of the week or weekends).

Overlapping time windows are time periods within a given day. System for providing a delivery time is well known in the art. For example, Tsukuda discloses a delivery system for managing delivery of goods from a distribution center. In so doing, Tsukuda discloses a delivery managing a delivery system in which an individual may choose a delivery time with the obvious difference that receiving choices from a plurality of overlapping time windows are not made by a recipient. David teaches a system in which a customer (the examiner interprets the customer as “recipient”) selects a delivery time within a window. Tsukuda further teaches an Internet (most Internet system comprises of a webpage). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda to include an overlapping time window being selected by a recipient/customer as evidenced by David in order to allow a recipient to receive a particular package at a time that would be available to receive it.

As per claim 29, Tsukuda disclose a scheduling engine to determine whether a maximum number of orders to be delivered within one of said plurality of time windows has been reached (i.e., list of the scheduled date and time for delivery) (col. 5, lines 15-25).

4. Claims 20-21, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukuda (US Patent No. 6,085,170) in view of David (Core Competency) and further in view of Smith et al “Smith” (US Patent No. 6,879,962).

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As per claims 20, 21 and 30, the combined references of Tsukuda and David does not expressly disclose determining which time windows of said plurality have associated with them the least cost of service in making the delivery and determining whether the cost of delivering the item within a time window of said plurality is less than a monetary threshold. Smith in the same field of endeavor discloses the concept of a least cost of service in making a delivery (col. 2, lines 33-46). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda and David to incorporate the teachings of Smith in order to determine a minimum cost of delivering a package.

### **Remarks**

5. Applicant has incorporated the feature of claims 2, 10, and 17 into independent claims 1, 9, 16, 24, and 40, and argues that this feature is not present in the prior art. However, the examiner interprets this feature as a customer desiring a product to be delivered in a particular month and during the first two weeks or last two weeks of that particular month. The sequential time windows are the month and the overlapping windows are the week. So, this is similar to applicant's claimed invention, and the examiner finds no patentable subject matter apart from this interpretation. Thus, it would have been obvious to a person of ordinary skill in the art to note this obvious difference merely as a change in language when viewing the Tsukuda and David references.

### **Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Chipman et al (U.S. Patent No. 6,038,668) discloses a shipping industry which include time table for shipping routes (overlapping as to delivery schedules for the industry).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (571) 272-6732. The examiner can normally be reached on Mon-Thurs 7:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R. Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJ

March 6, 2006

*Romain Jeanty*  
*Primary Examiner*  
*Art Unit 3623*